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PART IV-C

Statutory Rules and Orders (Other than those published in Parts I, I-A and I-L) made by Statutory Authorities other than the Government of Gujarat including those made by the Government of India, the High Courts, the Director of Municipalities, the Commissioner of Police, the Director of Prohibition and Excise, the District Magistrates and the Election Commission, Election Tribunals, Returning Officers and other authorities under the Election Commission.

GUJARAT REAL ESTATE REGULATORY AUTHORITY

Gandhinagar, 16th October, 2021

GUJARAT REAL ESTATE REGULATORY AUTHORITY (GENERAL) (EXECUTION PROCEEDINGS) REGULATIONS 2021

No: Gujarat RERA.2021/1/Gen.Reg/Execution Proceedings Regulations/8: In exercise of the powers conferred on it, under sub-Section (1) and Clause (1) of sub-Section (2) of Section 85 of the Real Estate (Regulation and Development) Act, 2016 and all other powers enabling it in that behalf, the Gujarat Real Estate Regulatory Authority hereby makes the following regulations for the effective execution of the Orders/Directions passed/issued by the Authority: -

1. Short Title and Commencement:

These Regulations may be called “The Gujarat Real Estate Regulatory Authority (Execution Proceedings) Regulations, 2021.

These Regulations extends to the whole of Gujarat State.

These Regulations shall come into force on the date of their publication in the Official Gazette.

2. Definitions:

(a) ‘Act’ means the Real Estate (Regulation and Development) Act, 2016 as amended from time to time.

(b) ‘Adjudicating Officer’ means the Adjudicating Officer appointed under sub-Section (1) of Section 71 of the Act.

- (c) **‘Authority’** means the Real Estate Regulatory Authority established under sub-Section (1) of Section 20 of the Act.
- (d) **‘Authorized Officer’** means the Secretary, Administrative Officer or the Officer authorized by the Authority to enforce and execute the orders, decisions, or directions of the Authority passed from time to time.
- (e) **‘Building’** includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes.
- (f) **‘Chairperson’** means the Chairperson of the Real Estate Regulatory Authority appointed under Section 21.
- (g) **‘Company’** means a company incorporated and registered under the Companies Act, 2013 (18 of 2013) and includes-
 - (i) a corporation established by or under any Central Act or State Act;
 - (ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force.
- (h) **‘Court’** means a Civil, Criminal or Revenue Court and includes any Tribunal or any other Authority constituted under any law for the time being in force to exercise judicial or quasi-judicial functions.
- (i) **‘Decree’** means the order, direction, decision passed by the Authority.
- (j) **‘Decree Holder’** means any person in whose favour a decree/order has been passed or an order capable of execution has been made.
- (k) **‘Estimated Cost of Real Estate Project’** means the total cost involved in developing the Real Estate Project and includes the land cost, taxes, cess, development and other charges.
- (l) **‘Family’** includes husband, wife, minor son and unmarried daughter wholly dependent on a person.
- (m) **‘Immovable Property’** includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass.
- (n) **‘Interest’** means the rates of interest payable by the Promoter or the Allottee, as the case may be.

Explanation- For the purpose of this clause-

- (i) the rate of interest chargeable from the Allottee by the Promoter, in case of default, shall be equal to the rate of interest which the Promoter shall be liable to pay the Allottee, in case of default;
 - (ii) the interest payable by the Promoter to the Allottee shall be from the date the Promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the Allottee to the Promoter shall be from the date the Allottee defaults in payment to the Promoter till the date it is paid.
- (o) **‘Judgment Debtor’** means any person against whom a decree or order has been passed or order capable of execution has been made.
 - (p) **‘Legal Representative’** means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.
 - (q) **‘Local Authority’** means the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction.

- (r) **‘Member’** means the member of the Real Estate Regulatory Authority appointed under Section 21 and includes the Chairperson.
- (s) **‘Mesne Profit’** of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person in wrongful possession.
- (t) **‘Moveable Property’** includes growing crops.
- (u) **‘Notification’** means a notification published in the Official Gazette and the expression ‘notify’ shall be construed accordingly.
- (v) **‘Person’** includes-
 - (i) an individual;
 - (ii) a Hindu undivided family;
 - (iii) a company;
 - (iv) a firm under the Indian Partnership Act, 1932 (9 of 1932) or the Limited Liability Partnership Act, 2008 (6 of 2009), as the case may be;
 - (v) a competent authority;
 - (vi) an association of persons or a body of individuals whether incorporated or not;
 - (vii) a co-operative society registered under any law relating to co-operative societies;
 - (viii) any such other entity as the appropriate Government may, by notification, specify in this behalf.
- (w) **‘Prescribed’** means prescribed by rules and regulations made under the Act.
- (x) **‘Project’** means the Real Estate Project as defined in Section 2 (zn) of the Act.
- (y) **‘Promoter’** means the Promoter/Builder/Developer as defined in Section 2 (zk) of the Act.
- (z) **‘Regulations’** means the regulations made by the Authority under this Act.
- (za) **‘Rules’** means the rules made under this Act by the appropriate Government.
- (zb) **‘Words and Expressions’** used herein, but not defined in this Regulations and defined in any law for the time being in force or in the Municipal Laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws.

3. Execution of Orders/Directions in general:

Section 40 (1) of the Real Estate (Regulation and Development) act, 2016 provides that;

“If a Promoter or an Allottee or a Real Estate Agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the Adjudicating Officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such Promoter or Allottee or Real Estate Agent, in such manner as may be prescribed as an arrears of land revenue.

Section 40 (2) of the Real Estate (Regulation and Development) act, 2016 provides as under;

“If any Adjudicating Officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”

Rule 20 of the Gujarat Real Estate (Regulation and Development) Rules, 2017 prescribes the manner of implementation of order, direction or decisions of the Adjudicating Officer, the Regulatory Authority or the Appellate Tribunal as below;

“For the purpose of sub-Section (2) of Section 40, every order passed by the Adjudicating Officer, Regulatory Authority or Appellate Tribunal, as the case may be, under the Act or the rules and regulations made thereunder, shall be enforced by the Adjudicating Officer, Regulatory Authority or the Appellate Tribunal in the same manner as if it were a decree or order made by the Principal Civil Court in a suit pending therein and it shall be lawful for the Adjudicating Officer, Regulatory Authority or Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the Principal Civil Court, to execute such order either within the local limits of whose jurisdiction the Real Estate Project is located or in the Principal Civil Court within the local limits of whose jurisdiction the person against whom the order is being issued, actually and voluntarily resides, or carries on business, or personally works for gain.”

Execution is the enforcement by the process of the Court of its own decrees. The provisions relating to the execution of decrees are applicable under Section 36 of the Civil Procedure Code to the execution of the orders also. The term ‘Order’ is defined in Section 2 (14) of the Civil Procedure Code, as the formal expression of any decision of a Civil Court, which is not a decree. It is not limited to orders made under the Civil Procedure Code.

4. Application for Execution:

All proceedings in execution are commenced by an application for an execution. Order 21 Rule 10 of the Civil Procedure Code, provides that;

“Where the holder of the decree desires to execute it, he shall apply to the Court which passed the decree or to the Officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained, to another Court then to such Court or the proper Officer thereof.”

As per the provisions of Order 21 Rule 11 of the Civil Procedure Code, every application for the execution of a decree/order should be in writing, signed and verified by the applicant or by some authorized person containing the details in tabular form as under; (Form- I)

- (a) the number of the suit/Complaint;
- (b) the names of the parties;
- (c) the date of the decree/order;
- (d) whether any appeal has been preferred from the decree/order;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree/order;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree/order, the dates of such applications and their results;
- (g) the amount with, interest (if any) due upon the decree/order, or other relief granted thereby, together with particulars of any cross-decree/order, whether passed before or after the date of the decree/order sought to be executed;
- (h) the amount of the costs (if any) awarded;
- (i) the name of the person against whom execution of the decree/order is sought; and
- (j) the mode in which the assistance of the Court is required whether-
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;

- (iii) by the arrest and detention in prison of any person;
- (iv) by the appointment of a receiver;
- (v) otherwise, as the nature of the relief granted may require.

5. Submission of Application:

Every application for execution of order/direction/decision under Section 40 of the Act and Rule 20 of the Rules, shall be submitted online as well as in hard copy with all the details and documents to the Authority, in a prescribed Form I.

The hard copy of the application along with all the details and documents should be submitted to the Authority at least within a period of seven days from the date of online submission of the application.

6. Registration/Process Fees:

Application for execution of order/direction/decision in a prescribed form as above, shall be accompanied by a fee of rupees five hundred in the form of a Demand Draft drawn on a Nationalized Bank, in favour of the Authority and payable at the main branch of that Bank at the station where the seat of the said Authority is situated.

7. Who may apply for execution:

As provided in Order 21 Rules 15 and 16 of the Civil Procedure Code, the application for execution must be made by the party-person in whose favour the decision/order/direction is passed.

If the order/direction/decision has been passed jointly, in favour of more persons than one, any of such persons may apply for an execution.

If the party-person in whose favour order/direction/decision has been passed is dead, his legal representative may apply for an execution.

8. Against whom execution may be applied for:

If the Judgment-debtor, against whom the order/direction/decision has been passed is living, the execution of such order/direction/decision will be applied for against him. If such person is dead, the execution may be applied for against his legal representative(s), only in respect of the property of the Judgment-debtor which is with the legal representative(s), but not for arrest and detention of such legal representative in Civil Jail.

9. Questions to be determined by the Authority in Execution Proceedings:

As provided in Section 47 of the Civil Procedure Code, all questions arising between the parties to the Complaint in which the order was passed, or their representatives, and relating to the execution, discharge or satisfaction of the order, shall be determined by the Authority executing the order and not by a separate suit/Complaint.

10. Powers of the Authority in Execution Proceedings:

In view of the provisions of Section 51 of the Civil Procedure Code, the Authority may, order execution of the order/direction/decision-

- (a) by delivery of any property specifically ordered;
- (b) by attachment and sale or by the sale without attachment of any property;
- (c) by arrest and detention in prison for such period not exceeding the period specified in Section 58 of the Civil Procedure Code, where arrest and detention is permissible under that Section;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require:

Provided that, where the order/direction/decision is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Authority, for reasons recorded in writing, is satisfied-

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the order/direction-
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the Authority, or
 - (ii) has, after the institution of the Complaint in which the order was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or
- (b) that the judgment-debtor has, or has had since the date of the order, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or
- (c) that the order is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation- In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree/order.

11. Arrest and detention:

As provided in Section 55 of the Civil Procedure Code, in execution proceedings before the Authority-

A judgment-debtor may be arrested in execution of an order/direction at, any hour and on any day, and shall, as soon as practicable, be brought before the Authority, and his detention may be in the civil prison of the Authority or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly that, for the purpose of making an arrest, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the order in execution of which a judgment-debtor is arrested, is an order for the payment of money and the judgment-debtor pays the amount and the costs of the arrest to the officer arresting him, such officer shall at once release him.

Where a judgment-debtor is arrested in execution of an order for the payment of money and brought before the Authority, the Authority shall inform him that he may apply to be declared an insolvent, and that he may be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Authority, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Authority may release him from arrest, and, if he fails so to apply and to appear, the Authority may either direct the security to be

realized or commit him to the civil prison in execution of the order for the period as provided in Section 58 of the Civil Procedure Code.

Notwithstanding anything in these provisions, the Authority shall not order the arrest or detention in the civil prison of a woman in execution of an order for the payment of money.

12. Subsistence-allowance:

As provided in Order 21 Rule 39 of the Civil Procedure Code, no judgment-debtor shall be arrested in execution of an order/direction unless and until the decree-holder pays into the Office, such sum as the Authority thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Authority.

Where a judgment-debtor is committed to the civil prison in execution of an order, the Authority shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under Section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Authority shall be supplied by the party on whose application the judgement-debtor has been arrested by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Authority for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the execution proceedings.

13. Property liable to attachment and sale in Execution Proceedings:

As provided in Section 60 of the Civil Procedure Code, in the Execution Proceedings before the Authority, the properties namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as mentioned in Section 60 of the Civil Procedure Code, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf shall be liable for attachment and sale for the compliance of the order/direction of the Authority.

14. Attachment of Partnership Property:

The property belonging to a partnership shall not be attached or sold in execution of an order/direction other than an order/direction passed against the firm or against the partners in the said firm. However, the Authority may on the application of the applicant in whose favour order/direction was passed, make an order with regard to interest and profit, as provided in Order 21 Rule 49 of the Civil Procedure Code.

15. Execution of Order/Direction against Firm:

As per the provisions made in Order 21 Rule 50 of the Civil Procedure Code, where an order/direction has been passed against a Firm, execution may be granted-

- (a) against any property of the partnership;
- (b) against any person who has appeared in his own name under Rule 6 or Rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;
- (c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of Section 30 of the Indian Partnership Act, 1932 (9 of 1932).

16. Prescribed Form for Execution Application:**Form- I****Application for Execution of Order/Direction/Decision****[Order 21 Rule 11 of the CPC]**

In the Office of the Gujarat Real Estate Regulatory Authority, Gandhinagar

I, Original Complainant hereby apply for execution of the order/direction/decision herein-below- set forth;

1. No. of Original Complaint:
2. Name(s) of Applicant/Original Complainant:
3. Name(s) of Opponent/Original Respondent:
4. Date of Order/Decision:
5. Details of Appeal/Revision/Review filed/pending, if any:
6. Details of previous Execution Application, if any:
7. Actual amount due with interest on the date of filing application:
8. Any other relief granted by the Authority:
9. Amount of Cost awarded by the Authority:
10. Mode in which assistance of the Authority is required:
i.e Attachment and sale of movable or immovable property or arrest and detention of the Opponent/Original Respondent, or execution of sale deed or possession of property or any other specific relief.
11. Name, Address, Contact Number, e-mail address of the Opponent against whom relief of arrest and detention is claimed:
12. Details about the movable or immovable property against which relief is prayed for:
13. Any other details which are required for effective execution:

I, the Applicant/Original Complainant declare that what is stated herein is true to the best of my knowledge and belief.

Date:

Place:

.....
[Signature of Applicant]

17. Forms for other Processes- Appendix- E of CPC:

Under Appendix 'E' in the Civil Procedure Code, different Forms are prescribed for the stage wise process for Execution Proceedings which may be used with appropriate modifications as per requirement by the Authority.

(Sd/-) Illegible,
Chairman,
Gujarat Real Estate Regulatory Authority.

